



UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK

In re:

HBSA Industries, Inc.,
Debtor.

Case No. 91-12864

Chapter 7

APPLICATION OF THE UNITED STATES FOR
REIMBURSEMENT OF ADMINISTRATIVE EXPENSES

A. Preliminary Statement

The Attorney General of the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and through the undersigned attorneys, hereby files this Application for Reimbursement of Administrative Expenses. This Application seeks to recover approximately \$233,705.63 in response costs expended by EPA in connection with property located at 205-247 Lister Avenue, Falconer, Chautauqua County, New York. All of these costs have been expended since HBSA Industries, Inc. ("HBSA") filed for protection under Chapter 7 of the Bankruptcy Code on August 23, 1991. HBSA is liable for EPA's response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq.

The basis for this application is set forth below. A supporting declaration by the EPA On-Scene Coordinator, Bonita L. Green, is appended to this application and incorporated by reference herein ("Green Decl.") (Exhibit A).

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U.S. BANKRUPTCY COURT
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B. Statement in Support

1. Since 1975, HBSA has owned the property located at 205-247 Lister Avenue, Falconer, Chautauqua County, New York. This property is currently known as the Chase Interiors, Inc. Superfund Site (the "Site").

2. From on or about 1975 until 1991, HBSA manufactured store display fixtures at the Site through its wholly-owned subsidiary, Chase Interiors, Inc. ("Chase"). These manufacturing operations involved the use of a number of hazardous substances, as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. On August 13, 1991, HBSA and Chase each filed Chapter 11 bankruptcy petitions. On August 23, 1991, both cases were converted from Chapter 11 to Chapter 7 of the Bankruptcy Code. When the case was converted to Chapter 7, a number of drums, pails and other containers of hazardous substances remained at the Site. HBSA continues to hold title to the Site.

4. In order to mitigate the threat to human health and the environment posed by the hazardous substances at the Site, EPA determined to undertake a removal action consisting of disposal of the hazardous substances in the drums, pails and other containers and an evaluation of any other contamination at the site. See Action Memorandum, January 13, 1994 (Attachment "A" to Green Decl.).

5. EPA incurred \$233,705.63 in costs at the Site while conducting the removal action. EPA expects to incur minor

additional expenses associated with the removal action. See Green Decl. ¶ 7.

6. All of EPA's response actions and costs are consistent with the National Contingency Plan (the "NCP"), 40 C.F.R. Part 300.

7. Pursuant to Section 503(b) of the Bankruptcy Code, 11 U.S.C. § 503(b), all of EPA's response costs are "actual, necessary costs and expenses of preserving the estate."

8. Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), provides in pertinent part that the owner of a facility from which there is a release or threatened release of a hazardous substance shall be liable for all costs of remedial actions incurred by the United States not inconsistent with the NCP.

9. Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), provides in pertinent part that any person who at the time of disposal of any hazardous substance owned a facility at which such hazardous waste was disposed of shall be liable for all costs of remedial actions incurred by the United States not inconsistent with the NCP.

10. As the current owner of the facility, and as the owner of the facility at the time of disposal of a hazardous substance, HBSA is liable under Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), for the costs incurred and to be incurred by the United States in conducting the removal action at the Site.

11. The United States reserves the right to update its future cost estimates.

12. No payments have heretofore been made to the United States for the costs that are the subject of this application.

13. No agreement or understanding exists between the United States and any other person for the sharing of any compensation or reimbursement by the United States for the costs incurred in connection with this case.

14. No judgments have been rendered on this application.

15. No perfected security interest is held for the costs in this application.

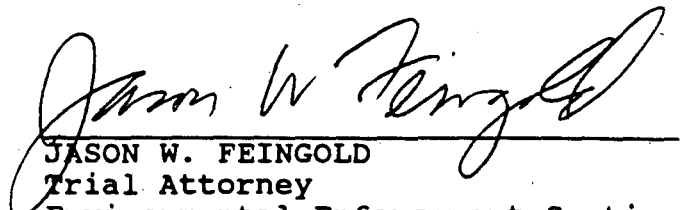
16. This application for post-petition response costs is filed, pursuant to Section 503 of the Bankruptcy Code, 11 U.S.C. § 503, as an administrative expense claim.

Dated: Buffalo, New York
February , 1995

Respectfully submitted,



JOEL M. GROSS
Acting Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice



JASON W. FEINGOLD
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-3483

PATRICK H. NeMOYER
United States Attorney
Western District of New York

By: MARTIN J. LITTLEFIELD
Assistant United States Attorney
Federal Center
138 Delaware Avenue
Buffalo, NY 14202
(716) 846-4811

4. As the OSC, I am also responsible for maintaining all records and data generated by EPA concerning the site.

5. Pursuant to a request from the State of New York, EPA undertook a preliminary assessment of the Site on September 15, 1993. Of primary concern were approximately 700 containers of hazardous substances left at the Site after operations ceased in 1991. These containers included 71 55-gallon drums, 537 five-gallon pails, three seven-gallon pails, 32 four-cubic yard boxes of small containers, and two cylinders. These substances posed an imminent threat to public health and the environment. As a result, it was determined that a removal action was necessary at the Site.

6. On November 30, 1993, I received verbal authorization to secure the Site. On December 13, 1993, 24 hour site security was initiated. On January 13, 1994, the findings of EPA's preliminary site assessment were set forth in an Action Memorandum. (Attachment A to this Declaration). On March 28, 1994, full removal activities began in conformity with the Action Memorandum. The removal of containers from the Site was completed on May 13, 1994. Such actions are consistent with the National Contingency Plan, 40 C.F.R. Part 300.


7. Pursuant to the January 13, 1994, Action Memorandum for the Site, EPA's Regional Administrator authorized the expenditure of \$696,000 to complete the removal action at the Site. As of January 4, 1995, EPA has incurred \$233,705.63 in costs while

conducting the removal action. EPA expects to incur minor additional office expenses associated with the removal action.

8. Based on my familiarity with the site and the operations conducted at the facility, I believe that the release or threatened release of hazardous substances into the environment resulted from the manufacturing of store display fixtures by HBSA Industries, Inc., through its wholly-owned subsidiary, Chase Interiors, Inc.

9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: Edison, New Jersey
February 9, 1995.


BONITA L. GREEN
On-Scene Coordinator
U.S. EPA - Region II
2890 Woodbridge Avenue
Edison, New Jersey 08837



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
EDISON, NEW JERSEY 08837

JAN 20 1994

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Exhibit
2

DATE: JAN 13 1994

SUBJECT: Request for Ceiling Increase and Confirmation of
On-Scene Coordinators Authorization for a Removal
Action at the Chase Interiors site, Falconer,
Chautaugua County, New York - ACTION MEMORANDUM

FROM: *Bonita L. Green*
Bonita L. Green, On-Scene Coordinator
Response and Prevention Branch

TO: William J. Muszynski, P.E.
Acting Regional Administrator

THRU: George Pavlou, Acting Director *George Pavlou*
Emergency and Remedial Response Division

SITE ID NO.: BV

I. PURPOSE

The purpose of this Action Memorandum is to request a ceiling increase, confirm the On-Scene Coordinator (OSC) \$50,000 authority and document approval of the proposed removal action described herein for the Chase Interiors site, 205-247 Lister Avenue, Falconer, Chautaugua County, New York.

On May 21, 1993, Mr. Michael J. O'Toole, Jr., Director of the Division of Hazardous Waste Remediation of the State of New York Department of Environmental Conservation (NYSDEC) requested that the U.S. Environmental Protection Agency (EPA) undertake a removal action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by, 42 U.S.C. 9601 et seq., at the Chase Interiors site.

On November 30, 1993, the OSC used her \$50,000 authority to initiate site security and this authority was confirmed with George Pavlou, Acting Director, Emergency and Remedial Response Division. This Action Memorandum is to continue site security, stabilize and dispose of all containers on this site. This site is not on the National Priorities List (NPL) and there are no nationally significant or precedent-setting issues associated with this site.

ATTACHMENT A

II. SITE CONDITIONS AND BACKGROUND

A. SITE DESCRIPTION

1. Removal Site Evaluation

On September 13-15 & 27, 1993, preliminary assessments conducted by EPA confirmed that this site poses a significant threat to public health and the environment, and meets the criteria for a removal action site. On September 13, 1993, EPA met with a NYSDEC representative to gain access to the building. An assessment was conducted for the purposes of air monitoring, hazardous categorization (hazcat) sampling and analysis, and confirmation of the inventory prepared by the creditors of HBSA Industries, Inc., which is the parent company of the most recent owner and operator of the site, Chase Interiors.

The majority of the containers are stored in three major storage areas in the building at the site. The remaining containers are scattered throughout the three floors of the building. The three storage areas at the site are overcrowded with containers. Five-gallon pails are stacked four high in rows separated by less than two feet and secured only with duct tape. In one of the storage rooms, the Organic Vapor Analyzer initially measured organic vapors at 100 units over background and maintained a reading of 30 units above background during the course of the assessment.

The inventory was completed on September 15, 1993, and identified that almost 700 containers are stored at the site: 71 fifty-five gallon drums, 537 five-gallon pails, 3 seven-gallon pails, 32 four cubic-yard boxes and 2 cylinders.

2. Physical Location

The Chase Interiors site is located at 205-247 Lister Avenue in an industrial/residential section of the Village of Falconer, Chautauqua County, NY. There are several businesses located adjacent to the property with the closest residences directly across the street.

The building faces the north and is on the south side of Lister Avenue. The site is bordered on the south by an Erie Railroad track line. Portions of the building inside also present physical hazards due to the lack of lighting and the decaying roof. The roof of the building is leaking, resulting in slick floor surfaces and warping of the wooden floorboards on all three stories below.

3. Site Characteristics

The original building was constructed in the late 1800s when it was known as the Wooster Wool Mill and operated until about 1968. Between 1968 and 1975, the Crescent Tool Company occupied the building, but little is known about the operations conducted during this period. In 1975 or 1976, the property was purchased by Frank Chase Cabinet Makers, which subsequently became Chase Interiors.

A three story brick building encompasses most of the site property. The building has between 150,000 to 200,000 square feet of floor space and is predominantly of wood frame construction with some steel beams bracing areas that have subsided. During the assessments, it was noted that there were three main storage areas, which were primarily used for the storage of flammable materials.

Chase Interiors built and finished store display fixtures. The operation consisted of gluing, wood fabrication, and spray painting. Accordingly, the Chase Interiors facility utilized various paints, thinners, shellacs, and adhesives which have flammable, corrosive, and toxic characteristics.

The three main areas that contained materials were overcrowded with containers, with some of the containers leaking. A small transformer in the furnace room was observed to be leaking. Field testing of the oil indicated the presence of Polychlorinated Biphenyls (PCBs). There is no ventilation or sprinkler system in the building and the electrical power has been disconnected. This will be the first removal action to occur at this site.

4. Release or Threatened Release Into the Environment of a Hazardous Substance, Pollutant or Contaminant

A significant threat of release of hazardous substances exists at the Chase Interiors site. Nearly seven hundred containers of various sizes are present at the facility and many of them are in deteriorated condition and leaking.

EPA conducted an inventory of chemicals on the site and based on information obtained from container labels, previous site inventories and Material Safety Data Sheets, the following hazardous substances have been tentatively identified at the site:

Types of Hazardous Substances Present

<u>Compound</u>	<u>Statutory Source of Designation of Hazardous Substances</u>
Waste flammable liquid	RCRA Section 3001
Waste flammable solid	RCRA Section 3001
Butyl acetate	CWA Section 311 (b) (4)
Sodium hydroxide	CWA Section 311 (b) (4)
Xylene	RCRA Section 3001

Each of the above substances contains one or more of the following physical or toxicological characteristics: acute toxicity, chronic toxicity, corrosivity, reactivity, and/or flammability.

The potential health effects from the hazardous substances listed above include:

SUMMARY OF POTENTIAL TOXICOLOGICAL EFFECTS OF SELECTED COMPOUNDS

	Eye, skin, or respiratory system irritant	Toxic by inhalation, ingestion, or contact	Central nervous system damage	Respiratory system damage	Kidney damage	Liver damage
Waste Fl. Liquid	X	X		X		
Waste Fl. Solid	X	X		X		
Butyl Acetate	X	X	X	X		
Sodium Hydroxide	X	X		X		
Xylene	X	X	X	X	X	X

Although the contents of some containers on-site are clearly identified, some containers have never been labeled or the labels/markings have been removed or are illegible. These containers will be treated as unknown substances.

A release due to a fire in the building is a route for potential human exposure. The site inspections by EPA found that the containers are haphazardly stored irrespective of their condition or the compatibility of their contents. Some of the containers

are deteriorating and have released their contents onto shelves or the floors. Some of these materials are potentially unstable when stored under their present conditions.

5. NPL Status

The Chase Interiors site is neither listed or proposed for inclusion on the NPL.

B. Other Actions to Date

1. Previous Actions

In August of 1986, the U.S. Department of Justice convened a grand jury which indicted the Plant Manager and Chase Interiors for the improper disposal of hazardous waste into a storm sewer system on the property. Chase Interiors subsequently cleaned the storm sewers used for waste disposal and plugged any drains connected to them.

In 1990, a consultant for Chase Interiors, prepared an Environmental Assessment along with a Phase II Workplan, which was never implemented due to the HBSA bankruptcy. Chase Interiors is a wholly owned subsidiary of HBSA Industries, Inc., which filed a voluntary petition for reorganization on August 13, 1991, under Chapter 11 of the U.S. Bankruptcy Code. On August 23, 1991, the company's creditors requested that HBSA and its subsidiaries be liquidated under Chapter 7 of the U.S. Bankruptcy Code.

Chase Interiors is a PRP at the Envirotech II Superfund site in Tonawanda, New York, because it disposed of twelve drums of hazardous wastes at Envirotech's facility.

2. Current Actions

There are currently no other actions taking place at this site.

C. STATE AND LOCAL AUTHORITIES' ROLE

1. State and Local Actions to Date

The State of New York is one of HBSA's creditors, because HBSA owes criminal penalties relating to one of its other sites. NYSDEC entered into a Phase II Order on Consent with Chase Interiors, which is now listed on its registry of inactive hazardous waste sites. As mentioned above, the Phase II Work Plan was prepared, but never implemented due to the HBSA bankruptcy.

In December 1991, HBSA's attorneys hired a contractor to prepare a stabilization workplan for the five HBSA subsidiaries. Under an agreement with NYSDEC, HBSA's two largest secured creditors, National Westminster Bank and Norstar Bank, funded the stabilization of the sites, under the supervision of the NYSDEC Resource Conservation and Recovery Act (RCRA) enforcement unit. The stabilization actions were completed to the NYSDEC's satisfaction and were documented in the contractor's report dated November 3, 1992, which was approved on February 22, 1993 and March 1, 1993.

On August 19, 1993, a letter from the Village of Falconer to Chase Interiors' creditors was sent citing various code violations at the Chase Interiors site. Such violations included boarded up of windows and doors, an inoperative sprinkler system, the failure to remove flammable trash and the failure to conduct basic structural maintenance and repairs on the building. None of the Village's concerns were addressed.

2. Potential for Continued State/Local Response

Neither the NYSDEC nor the Village of Falconer have the resources currently available to perform the necessary removal action at this site. Thus, these entities will act in a support role throughout the duration of this removal action.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health or Welfare

The primary threat posed by the abandoned containers, is that of exposure through direct human contact, fire, or explosion. There is also a threat of exposure to toxic vapors from the improper storage of hazardous substances.

Most of the containers were found to contain chemicals that are flammable, corrosive, and/or acutely toxic. A removal action will eliminate any threats posed by the improper storage of these containers and minimize the potential for direct human contact.

At least several hundred people reside in a neighborhood directly adjacent to the site. The site is unsecured and entry is possible through several entrances or first floor windows. There is a fence wall around the property perimeter, however there are several breaks in the fencing. Nearby residents report that children play on the property grounds and that on several occasions, persons have been observed entering the building. It appears that people trespass on the site, because parts of the building's electrical wiring has been stripped and doors have been propped open so that they do not lock.

B. Threats to the Environment

There is a potential for a release from the containers inside the building into the environment. Some of the containers have broken open and released their contents onto shelves and the building floors. There are no secondary containment structures surrounding any of the containers on the site.

A release or fire could spread runoff of chemicals onto the ground and contaminate the soil and potentially the groundwater. A spill of chemicals in the waste room could release materials from the garage door to the north and pollute the surrounding environment.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

The objectives of this project are: 1) abate the actual or potential threat to public health and welfare; 2) to immediately mitigate the actual or potential threat of fire, explosion, or release of hazardous substances into the environment in accordance with Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP); 3) to remove and dispose of all hazardous substances in accordance with RCRA and EPA's CERCLA Off-Site Treatment, Storage and Disposal Policy, Section 121(d)(3) of CERCLA, as amended.

The objective will be achieved by performing the following tasks:

a) Securing Containers:

Any leaking or unsecured containers will be overpacked as necessary. All materials will be stored in a secure area.

b) Segregation and Sampling:

Materials will be segregated on site by existing identification labels, site inventories and by sampling and analysis to insure proper segregation of incompatible materials. Materials will be sampled as needed for disposal purposes, according to a site-specific sampling plan.

c) Bulking, Transportation and Disposal:

Compatible materials will be bulked as deemed practical for transportation and disposal. Manufacturers and others will be solicited to reclaim any containers, which appear to contain useable product for recycling and reuse. EPA will dispose of unusable or non-recyclable hazardous materials at approved facilities and in accordance with EPA's CERCLA Off-Site Disposal Policy.

2. Contribution to Remedial Performance

Although this site is not on the NPL and no long-term remedial actions are currently planned, the actions taken to date and those proposed in this Action Memorandum are consistent with the requirements of Section 104(a)(2) of CERCLA.

3. Applicable or Relevant and Appropriate Requirements

This site will comply with all federal and state regulations pertaining to site safety and proper disposal of hazardous substances, which are deemed practicable.

4. Project Schedule

The project can be initiated within one week of approval of the request for fund authorization. Segregation, sampling, overpacking, and securing of containers can be accomplished within four to six weeks. Disposal analysis turnaround time is estimated at four to six weeks. Final removal and scheduling for disposal should occur thereafter.

Notifying and coordinating with manufacturers to reclaim materials and poor weather conditions could add additional delays in completing this removal action.

B. Estimated Costs

A summary of the estimated costs for the proposed removal action is presented below:

Extramural Costs:

Regional Allowance Costs:

a. Labor: including mobilization/demobilization, sampling, segregation, staging, overpacking, lodging and per diem	\$ 186,000
b. Equipment	\$ 42,000
c. Materials and field purchases	\$ 23,000
d. Laboratory disposal analysis	\$ 27,000
e. Transportation and disposal	\$ 128,000
f. Site security	\$ 72,000
SUBTOTAL	\$ 478,000
20% Contingency (Rounded)	\$ 96,000
SUBTOTAL	\$ 574,000

Other Extramural Costs Not Funded from the Regional Allowance

Total TAT Costs, including multiplier costs (Rounded)	\$ 60,000
Extramural Costs Contingency (20%)	\$ 12,000
Subtotal, Extramural Costs	\$ 72,000
TOTAL, EXTRAMURAL COSTS	\$ 646,000

Intramural Costs:

Intramural Direct Costs	\$ 35,000
Intramural Indirect Costs	\$ 15,000
TOTAL, INTRAMURAL COSTS	\$ 50,000

TOTAL, REMOVAL PROJECT CEILING **\$ 696,000**

Overall project costs could be reduced if manufacturers are able to reclaim materials for recycling or reuse.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action in securing and removing the hazardous substances from the site will extend the period of time that nearby residents are exposed to the threats presented by the conditions on the site. There is also the continuing threat of vandalism and arson at the site. People attempting to trespass and children playing on the property are routinely turned away by the local police department. Conditions noted during EPA's site investigations, such as leaking containers, will continue to cause potential public exposure. Failure to respond to the site will extend the time that hazardous substances on site will continue to pose a threat to public health and the environment.

VII. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues known to exist with this site.

VIII. ENFORCEMENT

The OSC is currently reviewing a draft PRP search report for the site and a PRP search is ongoing. This site has been referred to the office of Regional Counsel for discussion of enforcement options.

IX. RECOMMENDATION

This decision document represents the selected Removal action for the Chase Interiors site, 205-247 West Lister Street, Falconer, New York, developed in accordance with CERCLA, as amended, and is consistent with the NCP. This decision is based on the Administrative record for the site.


This Action Memorandum will also confirm the use of the \$50,000 OSC authority on November 30, 1993.

Conditions at this site continue to meet the criteria for a removal action under 40 CFR 300.415(b)(2) of the NCP. It is therefore recommended that you approve this CERCLA removal funding ceiling request.

The estimated project ceiling for this site is \$696,000, of which, \$574,000 is for mitigation contracting. The estimated costs of this project are within the Regional Advice of Allowance for the first quarter of FY'94.

Please indicate your approval of the funding for the Chase Interiors site, pursuant to your authority delegated by Assistant Administrator J. Winston Porter, May 25, 1988, Redelelegation Memorandum, Delegation Number R-14-1-A.

Approved: _____


William J. Muszynski, P.E.
Acting Regional Administrator

Date: _____

1/18/94

Disapproved: _____

William J. Muszynski, P.E.
Acting Regional Administrator

Date: _____

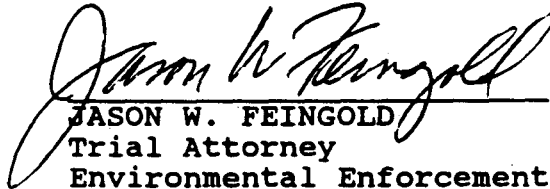
Attachment

cc: (after approval is obtained)

K. Callahan, 2DRA
G. Pavlou, 2ERRD
R. Salkie, 2ERR-ADREPP
B. Sprague, 2ERR-RPB
G. Zachos, 2ERR-RAB
J. Daloia, 2ERR-RPB
C. Fitzsimmons, 2ERR-RAB
W. McCabe, DDNY/CP
J. Marshall, 2OEP
E. Schaaf, 2ORC-NYCSUP
A. Schmandt, 2ORC
R. Gherardi, 2OPM-FIN
S. Becker, 2ERR-PS
C. Moyik, 2ERR-PS
M. Doster, NYSDEC-Region 9
M. O'Toole, NYSDEC
T. Grier, OS-210
J. Rosianski, EPD
C. Kelley, TATL
P. McKechnie, 2IG

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 1995, I caused to be served a copy of the foregoing Application for Reimbursement of Administrative Expenses and the supporting Memorandum and Declaration to the Counsel of record identified in the attached list via first class mail, postage prepaid.

A handwritten signature in dark ink, appearing to read "Jason W. Feingold", is written over a horizontal line.

JASON W. FEINGOLD
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, DC 20044
(202) 514-3483

In re HBSA Industries, Inc.
SERVICE LIST

Counsel for the Debtor:

Laurence J. Keiser, Esq.
Lowenthal, Landau, Fischer and Bring
250 Park Avenue
New York, NY 10177
(212) 986-1116

Chapter 7 Trustee:

Harold P. Bulan, Esq.
Goldstein, Navagh, Bulan and Chiari
Rand Building, Suite 1440
Buffalo, NY 14203
(716) 854-1332

U.S. Trustee:

Christopher Reed, Esq.
Office of the U.S. Trustee
42 Delaware Avenue
Suite 100
Buffalo, NY 14202
(716) 846-5541

No. 91-12864

United States District Court
FOR THE
WESTERN NEW YORK
DISTRICT OF

UNITED STATES BANKRUPTCY COURT

vs.

IN RE:
HBSA INDUSTRIES, INC.
Debtor

APPLICATION OF THE UNITED STATES
FOR REIMBURSEMENT OF ADMINISTRATIVE
EXPENSES

PATRICK H. McMOYER
United States Attorney
BY: MARTIN J. LITTLEFIELD
Assistant U.S. Attorney, Of Counsel
138 Delaware Avenue, Buffalo, NY 14202

Filed....., 19.....

..... Clerk.

By....., Deputy.

DEPARTMENT OF JUSTICE
LANDS DIVISION
FORCEMENT RECORD
42